

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re: Application Pursuant to 28 U.S.C. § 1782 of
NIKON CORPORATION,

Case No. 5:17-mc-80071-SVK

[Proposed] ORDER

Petitioner,

V.

GLOBALFOUNDRIES U.S. INC.

Respondent.

The Court has considered Nikon Corporation’s (“Nikon”) Application for an Order Directing GlobalFoundries U.S. Inc. to Respond to Requests for Documents Pursuant to 28 U.S.C. § 1782 for Use in Foreign Proceedings, the opposition submissions by GlobalFoundries U.S. Inc. (“GlobalFoundries”), Nikon’s reply submissions, and oral argument by counsel for both parties during a hearing on August 15, 2017. The Court finds that the statutory requirements of 28 U.S.C. § 1782 have been satisfied, and that the discretionary *Intel* factors favor, for reasons stated during the hearing, granting the requested discovery in this case. Good cause appearing,

It is HEREBY ORDERED that Nikon's Application is granted. Nikon is authorized pursuant to 28 U.S.C. § 1782 to obtain discovery from GlobalFoundries, as specified in Attachment A to the subpoena submitted as Exhibit B to Nikon's Application. The parties are HEREBY DIRECTED to meet-and-confer regarding the scope of the requests set forth in

1 Attachment A, and may return to this Court to resolve any disputes regarding the proper scope of
2 those requests. GlobalFoundries shall produce documents within forty-five days of the date of this
3 Order, provided that it may report to this Court by Monday, August 21, 2017, if it believes that
4 good cause exists to allow a longer time period to complete its production.

5 It is FURTHER ORDERED that the parties shall meet and confer regarding a protective
6 order. The parties shall file their proposed protective order with the Court by August 31, 2017.
7 GlobalFoundries's request that Nikon obtain protective orders from the foreign courts as a
8 condition for obtaining or using the ordered discovery is denied. This Court's protective order
9 shall govern the use of information produced by GlobalFoundries. In addition, the protective
10 order shall require Nikon to take all reasonable steps to ensure that each foreign court maintains
11 the confidentiality of information obtained from GlobalFoundries that has been designated
12 pursuant to this Court's protective order.

13 The parties shall also meet and confer about the scope of document production from
14 GlobalFoundries. GlobalFoundries has requested that the production of documents be sequenced
15 according to the subject matter covered in the foreign proceedings; but the Court declines to
16 impose that constraint on production, as it could encourage unnecessary disputes. The Court notes
17 that Nikon has filed a separate Section 1782 application seeking discovery from ASML US, Inc.
18 in the District of Arizona. Should that Court order production from ASML US, Inc., the parties to
19 this action shall meet and confer to address reasonable measures to avoid duplicative production.

20 Should a dispute arise regarding discovery pursuant to this Order, the parties will follow
21 this Court's procedure regarding resolution of discovery disputes by submitting a joint letter brief
22 in accordance with this Court's Standing Order. The Court will retain jurisdiction over this
23 proceeding for the purposes of supervising an orderly production of documents and enforcing the
24 protective order.

25 It is FURTHER ORDERED that Nikon will reimburse GlobalFoundries's reasonable out-
26 of-pocket expenses in locating, copying and delivering to counsel for Nikon the documents
27 produced under this Order.

1 DATED: August 39, 2017
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


Susan van Keulen
United States Magistrate Judge